IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 471 of 2004

Maharashtra Industrail Ddevelopment
Corporation, Mumbai 38 ..Appellant
(Orig. Deft no.3)

V/s

1. Udhav Maruti Bhosale
2. Bhanudas Maruti Bhosale
3. The State of Maharashtra
4. The Special Land Acquisition
Officer, No.1, Solapur .... Respondents
(Nos.1 and 2 Orig.Plffs
and Nos.3 and 4 Orig.
deft nos.1 and 2)

Ms Deepa Chavan i/b Little and Co. for Appellant
Mr.S.V.More,AGP for Respopndent nos.3 and 4
Mr.Nitin Jamdar for Respondent nos.1 and 2

CORAM:S.R.SATHE,J.
DATED:19th Jan. 2006

ORAL JUDGMENT :-

1. The Appellant, Maharashtra Industrial Development Corporation, (for the sake of convenience hereafter referred to as MIDC) the original defendant no.3 has preferred this appeal against the judgment and order passed by the District Judge, Solapur in Regular Civil Appeal no.357 of 2000 whereby the appeal was allowed and the judgment and order dismissing the plaintiffs' Special Civil Suit NO.1 of 1993 for declaration and permanent injunction was set aside and it was declared that award bearing NO.LAQ/VC/179 dated 1-9-1989 is illegal and void and defendants nos.1 to 3 were restrained from taking possession of the suit lands from the plaintiffs.

2. For the sake of convenience hereafter the parties shall be referred to as the plaintiffs and defendants.

. The brief facts giving rise to this appeal are as under :

3. The lands bearing Block No.118 admeasuring 37 Ares and Block No.120 admeasuring 4 Hector 23 Ares situated at village Chincholi kati, Taluka Mohol, district solapur were owned and possessed by the original plaintiff no.1 and original plaintiff nos.1 and 2 respectively. They were taking bagayat crop in the same.

4. In the year 1988 or thereabout the State of Maharashtra, original defendant no.1 decided to apply the provisions of the Maharashtra Industrial Development Act, 1961 (hereafter referred to as the MID Act) to the lands situated at village Chincholi kati, Taluka Mohol. The suit lands were included in the said area. As the lands were to be acquired for the Industrial development, the Government of Maharashtra issued notice under Section 32(2) of MID Act to the plaintiffs on 16-8-1988. As per provisions of the MID Act before issuing Notification under Section 32(1) regarding acquisition of the land it is necessary for the State Government to issue notice under Section 32(2). However, according to the plaintiffs, the State Government issued Notification under Section 32(1) prior to the issuance of notice under Section 32(2) of MID Act and as such there was breach of provisions of MID Act. When the plaintiffs received notice under Section 32(2) of MID Act they replied the same and raised objection for acquisition of their lands. According to the plaintiffs without giving any opportunity to them to place their grievance personally before the concerned authority, the Government of Maharashtra took further steps. However, no notice was given to the plaintiffs regarding handing over possession or for fixation of compensation. The defendants fixed compensation of Rs.7,400/- for Block No.118 and rs.93,600/- for Block No.120 and accordingly passed award on 1-9-1989. However, plaintiffs came to know about the same for the first time on 10-11-1989. At that time

plaintiffs also noticed that though it was mentioned in the said Award that compensation has been fixed with the consent of the plaintiff. No agreement was arrived at between the State of Maharashtra and plaintiffs.

5. When plaintiffs took 7 x12 extracts of the suit lands they found that name of MIDC, the original defendant no.3 was entered in the said extracts in holders (Kabjedar) column. According to the plaintiffs it was in fact necessary for the defendants to issue notice to them for handing over possession but no such notice was issued and false entries were made in the name of defendant no.3. Plaintiffs, therefore, issued notice under Section 80(1) of C.P.C. to the defendants and accordingly filed Special Civil Suit NO.1 of 1993 in the Court of the Civil Judge, S.D., Solapur and prayed for declaration that award passed in LAQ/VC/279 is illegal and void ab-initio. They also prayed for permanent injunction restraining defendants from taking possession of the suit lands.

6. The defendant nos 1 to 3 filed their joint written statement at Exh.17B and opposed the suit claim. They denied plaintiffs allegations that suit lands are Bagayat lands and that plaintiffs had spent about Rs.40,000/- for constructing a well. The Defendants contended that proper procedure was followed by them while acquiring the suit lands and opportunity was given to the plaintiffs to put forth their grievance by issuing notice under Section 32(2) of MID Act. The defendants contended notice under

Section 32(1) was issued after issuance of notice under Section 32(2) of the MID Act. After following necessary procedure under the MID Act and considering objections raised by the plaintiffs the defendant nos.1 and 2 acquired the lands of plaintiffs and award was passed. Not only that but after following due procedure, the defendant nos.1 and 2 took the possession of the suit lands and the same was handed over to the defendant no.3. As a result of the same, the names of plaintiffs were deleted from the record of rights and the name of the defendant no.3 was entered. Thus, according to the defendants the plaintiffs lost their right, title and interest in the suit property and as such they were not entitled to get any relief. The defendant therefore prayed for dismissal of the suit. On these pleadings, the learned trial Judge framed issues at Exh.--. In order to prove the suit claim, Bhanudas Maruti Bhosale, original plaintiff no.2 was examined on behalf of the plaintiffs.As against this on behalf of defendants Special Land Acquisition Officer, C.B.Hule was examined. Defendants also produced certain documents. After considering the evidence adduced by both the parties the learned trial Judge came to the conclusion that original defendant nos.1 and 2 had followed the due procedure as per the MID Act and award was passed. He also hold that the defendants took possession of the suit lands and the suit lands vest in the defendants. He therefore held that plaintiffs are not entitled for declaration and injunction. Naturally he dismissed the plaintiffs' suit.

7. Being aggrieved by the said judgment and order the original plaintiffs filed Regular Civil Appeal NO.357 of 2000 in the Court of District Judge, Solapur. After hearing the arguments advanced by both the Advocates, the learned District Judge,Solapur came to the conclusion that notice under Section 32(2) was not issued prior to the notice under Section 32(1) of MID Act and as such there was breach of the provisions of the MID Act and the award passed is illegal. He also held that no personal hearing was given to the plaintiffs as contemplated under Section 32(b) of MID Act. According to him, no proper procedure for taking possession was followed, no notice was given to the plaintiffs for handing over possession and actual possession was in fact not delivered by the plaintiffs to the defendants. He, therefore, held that lands are in possession of the plaintiffs and award passed in LAQ/VC/1979 dated 1/9/1989 is illegal and void. He, therefore, set aside the order of dismissal passed by the trial Court and passed decree for declaration and injunction in favour of the plaintiffs.

8. It is the above mentioned order that is being challenged in this Second appeal by the original defendant no.3 i.e. MIDC.

9. In this appeal before me, Ms.Deepa Chavan, learned Advocate for the appellants has urged three points.

Firstly, she submitted that having regard to the provisions of MID Act, the Civil Court had in fact no jurisdiction to go into the question as to whether proper procedure under the said Act was followed or not and the suit filed by the plaintiffs was in fact not maintainable as the Civil Court had no jurisdiction. Secondly, she canvased before me that finding recorded by the first Appellate Court to the effect that there was breach of Section 32(2) of MID Act is against the evidence on record. Lastly, she submitted that the first Appellate Court did not properly appreciate the evidence and wrongly held that procedure required for acquisition of land under MID Act was not followed by the defendants. She therefore, submitted that the appeal be allowed and the order passed by the first appellate court be set aside and the suit be dismissed.

10. As against this, Shri Nitin Jamdar,learned Advocate for Respondents supported the judgment and order passed by the first appellate court and submitted that issue with regard to the jurisdiction was not at all taken by the defendants in the trial Court as well as in the first appellate Court and the Appellant should not be allowed to agitate the said question for the first time in second appeal. He also submitted that defendants had failed to prove that proper procedure required under MID Act was followed. He, therefore, submitted that appeal be dismissed.

11. In view of the submission made before me following substantial questions of law are involved in this matter.

A. Whether Civil court had jurisdiction to go into the question of validity or legality of the notifications issued by the defendants under MID Act regarding acquisition of the suit lands and the procedure followed by the defendants in that behalf?

B Whether the finding of the first appellate court that there was breach of provision of Section 32(2) of MID Act is against the evidence on record?

C Whether proper procedure was followed by the defendants for acquisition in question?

12. The first and foremost objection raised by the learned Advocate for the Appellants is that the Civil Court had in fact no jurisdiction to entertain the suit filed by the plaintiffs. It is an admitted fact that issue with regard to the jurisdiction of civil Court was not raised by the defendants either in the trial court or even in the first appellate court and the same is raised for the first time in this second appeal. Naturally, question arises whether the defendants can be permitted to agitate the said issue at this juncture.

13. The learned Advocate for the plaintiffs has drawn my attention to a case, Rameshchand Ardawatiya V/s Anil

Panjwani **(2003) 7 SCC 350** wherein, Their Lordships have observed:

> "where there is a special tribunal conferred with jurisdiction or exclusive jurisdiction to try a particular class of cases even then the civil court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of the civil court is not to be readily inferred. An objection as to the exclusion of the civil court's jurisdiction for availability of an alternative forum should be taken before the trial court and at the earliest, failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice."

. Even from the bear reading of the above observations and in particular from the use of word "may", it is very clear that it is not a rule of law that if objection with regard to jurisdiction is taken for the first time in the appellate court and not taken before the trial court at the earliest occasion, the same cannot be entertained.

14. In fact, in a case, Chandrika Misir and another V/s Bhaiyalal- **AIR 1973 SC 2391** - Their Lordships of the Apex Court have held that where the court is inherently lacking in jurisdiction the plea as to jurisdiction may be raised at any stage, even if it was not raised in trial Court. There are also several reported cases in

which also it is held that merely because issue regarding jurisdiction isnot raised at the earliest, the same cannot be agitated later on. In Ajit Mohinder Singh and Ors V/s Smt.Bhani and another **AIR 1987 P & H 167** it is observed "question whether civil Court had or did not have jurisdiction can be raised even in second appeal for the first time where Court is inherently lacking jurisdiction. Then in Mohanlal V/s Ratna **AIR 1971 RAJ 164** - it is observed that plea of lack of jurisdiction of civil Court can be raised at any stage when it goes to the root of the mater and more so when it does not require investigation of facts. I therefore feel that it is necessary to consider the said issue.

15. The learned Advocate for the defendants submitted that the present suit in question is in respect of acquisition of land under MID Act. According to her, the said provisions in the act are in the nature of complete code in itself and the same is meant for the public purpose. She further submitted that provisions with regard to acquisition in MID Act and the provisions in the Land Acquisition Act are same and there are authoritative pronouncements wherein it has been held that civil court has no jurisdiction to decide the validity or legality of the Notification issued under the Land Acquisition Act. For this purpose, she has placed reliance on a case State of Bihar V/s Dhirendra Kumar and Ors. **AIR 1995 SC 1955**. That was a case arising out of Land Acquisition Act wherein Their Lordships have

observed :

> 2A. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under S. 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose..... Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil Court to take cognizance of the case under Section 9 of C.P.C. stands excluded and a civil Court has no jurisdiction to go into the question of the validity or legality of the notification under S. 4, and declaration under S. 6 except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable."

. There is another case - Laxmi Chand and others V Gram Panchayat, Kararia and Ors. **AIR 1996 SC 523** wherein also

Their Lordships have observed :

> 3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right that an aggrieved person has is to approach the constitutional Courts, viz. the High Court and the Supreme court under their plenary power under Articles 226 and 136 respectively with self imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court."

16. It is true that in the above mentioned two rulings Their Lordships were considering the provisions of Land Acquisition Act and not MID Act. However, if we take into consideration the relevant provisions with regard to acquisition of lands under both the Acts the same are absolutely similar. In fact there are some such sections in this act wherein it is clearly mentioned that procedure laid down in the Land Acquisition Act be followed. Section 34 of MID Act says:

> 34.(1) Any person aggrieved by the decision of the

Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made the provisions of Part III of the said Act shall mutatis mutandis apply to further proceedings in respect thereof.

(2) The decision of the court on such reference, and subject only to such decision, the decision of the Collector determining the amount of the compensation, shall be final.

17. Under the circumstances, though there is no specific provision excluding jurisdiction of Civil Court, in such matters of acquisition of land, by implementation and by applying analogy of the Land Acquisition Act it has to be said that powers of Civil Court to take cognisance of the case under Section 9 of Code of Civil Procedure stand excluded and the Civil Court has no jurisdiction to go into the question of the validity or legality of the Notification issued under Section 31, 32(1), 32(2) and other Sections in Chapter VI of MID Act. From the perusal of the plaint it is quite evident that the plaintiffs challenged the award on the ground that the proper procedure was not followed for acquisition of the

suit lands. So, I am of the view that such suit is in fact not maintainable in the civil Court. So, on the ground jurisdiction alone the order passed by the first Appellate Court shall have to be set aside.

18. Even if we assume for the sake of argument that civil court has jurisdiction to entertain the issue of validity and legality of the Notifications under MID Act still then from the material on record it appears that order passed by the learned District Judge is not legal and correct. The first Appellate Court has held that there was breach of Section 32(1) of MID Act as the notice under Section 32(2) of the said Act was not issued prior to issuance of notice under Section 32(1) of the said Act.

19. In order to decide whether the said finding is correct or not it would be worthwhile to see relevant provisions of Sections 32(1) and 32(2):

> 32(1) - If, at any time in the opinion of the State Government, any land is required for the purpose of development by the Corporation, or for any other purpose in furtherance of the objects of this Act, the State Government may acquire such land by publishing in the Official Gazette a notice specifying the particular purpose for which such land is required, and stating therein that the State Government has decided to acquire the land in

pursuance of this section.

32(2) - Before publishing a notice under sub-section 91), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein, to show cause, within such time as may be specified in the notice, why the land should not be acquired.

20. From the bear reading of the above sections it is very clear that notice under Section 32(2) has to be issued prior to issuing Notification under Section 32(1) of MID Act. The learned District Judge has observed that Notification under Section 32(1) of MID Act was issued on 27-3-1987 while the individual notices under Section 32(2) of MID Act were issued on 16-8-1988. So far as the notice under Section 32(2) is concerned, it is correct that it was issued on 16-8-19878. However, the evidence on record does not indicate that notice under Section 32(1) of MID Act was issued on 27-3-1987. On the contrary, the defendants have produced at Exh.58 the Notification published in Official Gazette dated 15-6-1989. From the perusal of the same it is very clear that Notification under Section 32(1) is issued on 15-6-1989 i.e. after the notice under Section 32(2) of MID Act was issued. So, I have no hesitation to hold that there was no breach of the provisions of Section 32(1) or Section 32(2) of MID Act in the instant case.

21. It was argued on behalf of the plaintiffs that they were not given personal hearing as contemplated under Section 32(3) of MID Act. It would be worthwhile to see what the said Section says. It runs as under:

> 3. After considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an opportunity of being heard the State Government may pass such orders as it deems fit.

. While considering this point one has to see the notice issued to the plaintiffs on 16-8-1988 which is at Exh.43. In this notice it is mentioned :

(If you desire to have personal hearing then within a period of one month from the receipt of this notice, by getting the time fixed, you may appear before the

undersigned personally or through power of attorney on any working day in between 11-00 a.m. to 1-00 p.m.)

22. Thus from the above mentioned paragraph 7 of the said notice Exh.43 it is very clear that opportunity was provided to the plaintiffs to have personal hearing and it was left open to them to appear at any day during working hours by getting an appointment. Admittedly, this notice has been received by the plaintiffs and they have also given reply to the same. However, it is not their case that as per para 7 of the said notice they had asked for any time and the defendants refused to give such time or that they had approached the defendants but they did not attend to them. When such is the position it cannot be said that there was no opportunity to the plaintiffs to putforward their case or that principles of natural justice were not followed. While advancing submission on this point, the learned Advocate for the defendant no.3 has led her hands on a case Madhav Ramchadnra Nanivadekar and Anr. V/s Special Land Acquisition Officer NO.2 and Ors - **1998(4) Bom.C.R. 171** wherein in similar circumstances the Division Bench of this Court observed that when there was no demand for personal hearing by the land holder it can be held that enquiry under Section 5A of Land Acquisition Act was initiated as a result for failure of giving personal hearing to the Petitioners. In fact in Rambhai Lakhabai Bhakt V/s State of Gujarat and others **AIR 1995 SC 1549** the Apex Court has held that in a case where the claimant

filed his objection to a notice under Section 4 and did not ask for a personal hearing it would be obvious that he did not intend to avail the benefit of personal hearing while submitting the objections. If personal hearing was asked for and was not given it would be a different matter. Thus taking into consideration the above position of law and the facts of the present case it cannot be said that the defendants had not given to plaintiffs as opportunity of personal hearing and that there was breach of Section 32(3) of MID Act.

23. The plaintiffs had also alleged that the defendants had not issued notice in respect of the land bearing Block No.120. However, it is pertinent to note that admittedly, the plaintiffs had given reply to the defendants notice (exh.44) and therein clearly admitted that they received notice under Section 32(1) in respect of both the lands. So, under such circumstances merely because there is no copy of notice issued in respect of land bearing Block No.120 on record it cannot be said that the defendants had not issued notice in respect of the said land. So, there is obviously no substance in the allegation made by the plaintiffs in this behalf.

. Much is made about the fact that the defendant had not issued notice to hand over possession of the suit lands under Section 32(5) of MID Act. For this purpose it would be necessary to see the said Section. It runs as follows :-

32(5) Where any land is vested in the State Government under sub-section (4), the State Government may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by in in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the State Government may take possession of the land, and may for that purpose use such force as may be necessary.

24. The first appellate court has observed that the defendants though alleged that possession was taken by drawing a panchanama and Kabjepavati was also prepared, the plaintiffs failed to produce and prove the said document. However, from the judgment of the trial Court it is very clear that panchanama with regard to the possession is produced by the defendants along with Exh.57. Besides this there is official record to show that possession was taken through Talathi. The defendants witness has also categorically stated that possession was obtained by drawing panchanama. It is true that he had no personal knowledge and he had deposed on the basis of the record. So, under such circumstances

due weightage shall have to be given to the defendants evidence in this behalf. Moreover, when defendants had followed all other procedure viz. issuing notifications under Section 31 and 32(1) and notices under Section 32(2) it cannot be said that they would not take the next steps of securing possession. Besides this, we do find that name of defendant no.3 has been entered in the record of rights in column of holder (Kabjedar). It is true that in column of Kul and Khand there is entry in the name of the plaintiffs. However, merely freom that we cannot jump to the conclusion that defendants had not taken the possession. We cannot ignore the fact that once necessary notifications were issued and notices were given to the plaintiffs, the suit lands vest absolutely in the State Government free from all encumbrances as per provisions of Section 32(4) of the MID Act.So, under such circumstances merely because there is some entry in the name of plaintiffs in column of ’Kul and Khand’ we cannot jump to the conclusion that the defendants had not taken possession of the lands in question. So, the finding of the first Appellate Court in that behalf is not sustainable.

25. Thus, from the perusal of the entire evidence and cosnidering the position of law it is very clear that the award in respect of the suit lands was passed on 1-9-1989. Defendants also took the possession so there is no sufficient evidence to hold that the defendants had failed to follow proper procedure for acquiring the suit

lands. The finding recorded by the first Appellate Court that the defendants committed breach of provisions of Section 32 of MID Act is not legal and correct and as such the same shall have to be set aside,. Thus looking to the case from any angle it is very clear that plaintiffs are not entitled to get declaration and injunction as prayed.

. In this view of the matter, the appeal is allowed. The order passed by the District Judge, Solapur in Regular Civil Appeal No.357 of 2000 is set aside and Special Civil Suit No.1 of 1993 is dismissed.

. Parties to bear their own cost.

. At this stage the learned Advocate for the Respondent-plaintiffs submits that as plaintiffs want to approach the Apex Court the above order be stayed for a period of 12 weeks. Having regard to the fact that I have already held that the property in question is not actually in possession of the plaintiff and it vests in the present Appellants and they have taken possession of the same by following due procedure, there is no need to grant stay. Hence prayer in that behalf is rejected.

(S.R.SATHE,J)

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